

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

ROGER L. ARBOGAST,

Plaintiff,

v.

**CIVIL ACTION NO. 2:13-CV-10
(Judge Bailey)**

**DR. POLICARPIO,
WEXFORD MEDICAL CENTER,
ST. MARYS CORRECTIONAL CENTER, and
WEST VIRGINIA DIVISION OF CORRECTIONS,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel. By Local Rule, this action was referred to Magistrate Judge Joel for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Joel filed his R&R on June 21, 2013 [Doc. 24]. In that filing, the magistrate judge recommended that this Court dismiss with prejudice the plaintiff's claims against St. Marys Correctional Center and the West Virginia Division of Corrections for failure to name a proper defendant [Doc. 24 at 6]. In addition, the magistrate judge recommended that this Court dismiss without prejudice the plaintiff's claims against Dr. Policarpio and Wexford Medical Center for failure to exhaust administrative remedies [*Id.*].

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made.

However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). The docket sheet reflects that service was accepted on June 24, 2013 [Doc. 25]. To date, no objections have been filed.

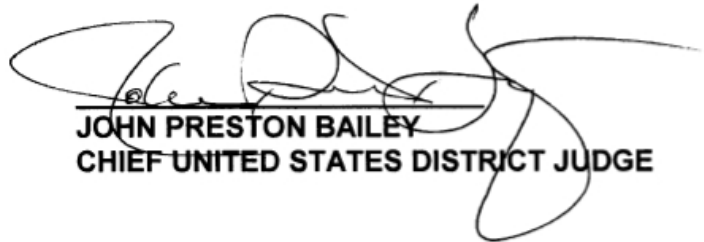
Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [Doc. 24] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DISMISSES with prejudice** the plaintiff's **claims against St. Marys Correctional Center** and the **West Virginia Division of Corrections** for failure to name a proper defendant and **DISMISSES without prejudice** the plaintiff's **claims against Dr. Policarpio** and **Wexford Medical Center** for failure to exhaust administrative remedies. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is directed to enter a separate judgment in favor of the defendants.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and

to mail a copy to the *pro se* plaintiff.

DATED: July 15, 2013.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE